

December 2020 Response to Comments

Z2020-1013-01 Administrative Emergency Decision Proposed Regulations

Support of the Department's implementation of Administrative Emergency Decisions.

Written Comments: 1, 3, 10, 11, 14, 15, 16, 20, 21, 23, 27, 29, 33, 37, 38, 39

Public Hearing Comments: 1, 2, 4, 5, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

Comments Summary:

Commenters support the Department's stated purpose and outcome of the proposed regulation. They support the Department closing the loophole of automatic stays allowing licensees to remain in business for extensive periods of time even after having been shown to be an immediate threat to public health, safety, and welfare while appealing to the California Alcoholic Beverage Appeals Board regardless of the violation that was proven. This will allow the Department to hold licensees accountable sooner for their actions in serious violations, better protecting the public health, safety, and welfare.

CA Dept of Alcoholic Beverage Control Response:

The Department thanks the commenters for their participation in the preparation of this regulatory action and their support for the implementation of these rules. These comments require no changes to the proposed regulatory package.

Outside the scope suggestion that the Department license and regulate third-party delivery providers in California.

Written Comments: 10, 13, 14, 15, 16, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 33, 37, 38, 39

Public Hearing Comments: 1, 2, 4, 5, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33

Comments Summary:

Commenters are concerned with the increased use of third-party delivery services by ABC licensees due to changing industry trends during the COVID-19 pandemic and related emergency public health orders. Commenters request that the Department create a new license for third-party providers and regulate this area of the alcoholic beverage industry.

CA Dept of Alcoholic Beverage Control Response:

These comments are outside the scope of this regulatory action for administrative emergency decisions, other than the improper use of third-party delivery services by licensees possibly being subject to an Administrative Emergency Decision. However, due to the high number of these comments within the record the Department would like to respond.

The Department recognizes the issues with third-party delivery services acting as agents of ABC licensees to deliver alcoholic beverages to consumer's homes. In the early stages of the pandemic initial minor decoy operations performed by the Department had as much as a 70% failure rate in these types of transactions. Through working with the industry and third-party delivery services the failure rate of more recent operations has been lower than 25%. While this is not enough improvement to stop scrutinizing these deliveries, the Department recognizes that both third-party providers and ABC licensees are working to solve this issue.

Every ABC license type is issued in conjunction with a legislatively created section of the California Business and Professions Code. The Department is not able to create new forms of licenses through regulatory action. New license types can only be established by legislative action in the California Business and Professions Code. The Department has no jurisdiction or authority over non-licensed businesses such as the third-party delivery companies working as agents of ABC licensees.

ABC has already taken the first steps of regulatory action to enforce against violations of third-party delivery companies by creating [delivery minor decoy requirements](#) first as an emergency regulatory action in May of 2020, and later making the regulation permanent through the certificate of compliance process on December 3, 2020. This regulation allows the Department to hold ABC licensees accountable for violations of law by their agent third-party delivery services in furnishing alcoholic beverages to persons under the age of 21. The Department is continuing to monitor the industry and the results of future delivery minor decoy operations to observe if more regulatory action is needed to ensure ABC licensees control their agents and limit the furnishing of alcohol to persons under the age of 21. These comments require no changes to the proposed regulatory package.

The proposed regulatory action violates the due process rights of licensees

Written Comments: 2, 4, 6, 8, 9, 17, 18, 19, 22, 31, 34, 35, 36

Public Hearing Comments: 6, 8

Comments Summary:

Commenters state in general terms that the proposed regulatory package removes due process protections from ABC licensees where the Department can deprive a licensee holder of appeal rights and this removal of ABC licensee due process rights is unconstitutional.

CA Dept of Alcoholic Beverage Control Response:

The Department is not removing due process rights from licensees through this regulation. The Department is establishing a new procedure prior to the normal administrative process to ensure that immediate harms to the public health, safety, and welfare are curbed while the normal administrative process is completed. The procedure outlined within the regulatory package mirrors due process standards set by the Legislature in Government Code sections 11460.10 – 11460.80. The procedures being established by this regulation ensure the opposite of commenters' assertion and ensure the Department does not impose any administrative emergency decisions without providing due process for licensees.

The Department is required to hold an emergency hearing to determine if an administrative emergency decision is needed, and the Department must provide notice to the licensee, if practicable. In all cases notice will be attempted, however if the licensee is unavailable or non-responsive, the hearing can still proceed. In order to comply with this requirement, if the licensee is not present or unavailable for the administrative emergency decision hearing, the Department will need to prove that notice to the licensee was not practicable by preponderance of the evidence. This language mirrors the legislative statutory authority outlined in Government Code section 11460.40. The regulatory package also requires the Department to "give the licensee an opportunity to present evidence related to the alleged immediate threat to the public health, safety, or welfare that requires immediate action and to request what the licensee believes to be an appropriate action, if any, to be taken under an emergency decision." (Subsection (g) of the proposed text.) In addition, the Department shall only issue an emergency administrative decision "[i]f the department finds by a preponderance of the evidence that there exists a factual basis that the alleged violation occurred and that the alleged violation is an immediate threat to the public health, safety, or welfare that requires immediate action." (Subsection (h) of the proposed text.) Further, for an administrative emergency decision to remain in effect after being issued, the Department must commence its normal administrative process within ten days of issuing the emergency order. This ensures there is no delay in the Department's normal administrative process caused by the addition of administrative emergency decisions. This proposed process again mirrors the legislative statutory authority outlined in Government Code section 11460.60.

The only protection granted to ABC licensees in the regular administrative process that is not found in the administrative emergency hearing process is the automatic stay imposed on all Department decisions when appealed to the Alcoholic Beverage Control Appeals Board (“ABC appeals board”). This automatic stay was specifically excluded for administrative emergency decisions by the Legislature in a change to Business and Professions Code section 23090.5 by Senate Bill 788 in 2019. Licensees will continue to have the right to appeal all administrative emergency decisions issued by the Department within the proposed regulation at the Superior Court of California which is specifically authorized to review the Department’s administrative emergency decisions to protect the due process rights of licensees by changes in Senate Bill 788. The Superior Court rulings can then be reviewed through the appropriate Court of Appeal the same as the normal administrative hearing decisions after being appealed to the ABC appeals board.

The due process is different for the emergency administrative hearings outlined in this regulatory action, but ABC licensees continue to have their due process rights protected within it, including the right to notice, the right to a hearing, and the right to appeal. The Department is not removing due process from licensees with this regulation. It is ensuring that due process is provided in the very manner outlined by the Legislature in the Administrative Procedure Act for administrative emergency decisions. These comments require no changes to the proposed regulatory package.

Suggestion the regulatory package is unnecessary because the Department already has the normal administrative hearing process.

Written Comments: 2, 4, 18, 19

Public Hearing Comments: 8

Comments Summary:

Commenters state that the current administrative procedure used by the Department is enough to hold licensees accountable for violations of the ABC Act and the addition of the administrative emergency decision process of the proposed regulation is unnecessary.

CA Dept of Alcoholic Beverage Control Response:

The Department has a long history of holding licensees accountable through its normal administrative process. As outlined in the Department's May 11, 2020, Emergency Notice, and again in the October 26, 2020, Certificate of Compliance Notice, the usual process can take months or years to have any effect due to administrative hearings, coupled with the automatic stay for the often-lengthy period for appeals to the Alcoholic Beverage Control Appeals Board ("ABC appeals board"), and further appeals to the courts of appeal, with or without stays imposed. The changes proposed in this regulation do not change this system, but merely provide a new step at the beginning of this process as authorized by the Legislature in Government Code sections 11460.10 – 11460.80 for all agencies issuing administrative decisions under the Administrative Procedure Act.

Prior to the COVID-19 pandemic, the Department had been preparing to implement this statutorily authorized power for administrative emergency hearings which was authorized without the automatic stay to the ABC appeals board by the Legislature in Senate Bill 788 passed in 2019. However, given the state of emergency facing the state, the Department felt it was necessary to employ this statutorily authorized power as an emergency regulation to ensure drastic immediate harm to the public health, safety, and welfare was not left unregulated in the current crisis. The Department, through the certificate of compliance process, has expanded the proposed regulation to incorporate additional non-emergency provisions beyond the scope of the emergency to better provide protection for various circumstances that present an immediate harm to public health, safety, and welfare even unrelated to the COVID-19 state of emergency going forward. These comments require no changes to the proposed regulatory package.

Suggestion the regulatory package is unnecessary because it will only affect a small percentage of licensees.

Written Comments: 5

Public Hearing Comments: None

Comments Summary:

Commenter, using evidence of compliance with current public health orders, suggests that these rules will only affect a small number of ABC licensees and are therefore unnecessary.

CA Dept of Alcoholic Beverage Control Response:

The Department commends the alcoholic beverage industry in that this comment is correct that most ABC licensees are compliant with the law and will never face even the specter of an administrative emergency hearing. Even most “common” violations, like those alluded to in Section 147(b)(5) such as furnishing alcohol to a minor, would not be subject to this regulatory package because most licensees do not do so knowingly on a consistent basis. These types of violations usually occur on accident or because an employee of a licensee does not follow policies in place to deter this type of behavior.

Unfortunately, there are some ABC licensees who brazenly defy the rules set up by the Legislature and enforced by the Department to protect the public health, safety, and welfare. While they are a small number, these licensees do warrant action by the Department to ensure the harms they inflict upon the public health, safety, and welfare are limited. The Department’s role in protecting the public health, safety, and welfare has been specifically mandated by the Legislature. This regulatory package allows the Department to curb immediate harms after an administrative emergency hearing, without the automatic stay loophole that allows bad actors to continue operating even after they are shown to be a danger to their communities. The Department considers this regulatory package necessary to protect against great harms that can occur at a licensed premises being run by the small number of operators who ignore their duty to protect the public health, safety, and welfare as an ABC licensee. This comment requires no changes to the proposed regulatory package.

Suggestion the regulatory package is unnecessary because the Department has the power to bring injunctive relief, and the 1994 law allowing this injunctive power preempts the proposed regulation.

Written Comments: 7, 22, 31, 34, 36

Public Hearing Comments: 8

Comments Summary:

Commenters state that currently the Department has the power to bring injunctive actions in superior court against licensees and therefore this regulatory package is unnecessary. Some claim that the injunctive power granted by the legislature in 1994 preempts the proposed regulatory package.

CA Dept of Alcoholic Beverage Control Response:

Business and Professions Code section 23053.1 (providing that the Department may seek injunctive relief) clarifies that the lack of Superior Court jurisdiction over the Department (Business and Professions Code section 23090.5) does not preclude the Department invoking Superior Court jurisdiction to prevent ongoing violations of law by ABC licensees. Notwithstanding this, there is nothing in either the ABC Act or the Government Code that precludes the Department from adopting regulations implementing the administrative emergency decision authority found in Government Code section 11460.10, et seq.

The Department was given the statutory authority to bring civil injunctive actions against licensees in the Superior Court of the county where the licensed premises is in 1984. This authority was amended in 1994 to provide earlier opportunity to do so prior to a final decision, as pointed out by commenters. However, this authority is not exclusive and does not bar the Department from adopting the current regulation to carry out and enforce administrative emergency decisions. Utilizing administrative emergency decision authority is more consistent with the administrative nature of the Department's disciplinary proceedings with the goal of achieving compliance through a timely procedure that protects due process. In addition, the Department has the experience and expertise to address violations of the ABC Act in the first instance through administrative emergency decisions, which the superior court lacks since it has no jurisdiction over Department actions and decisions except in injunctive proceedings pursuant to 23053.1, or in reviewing administrative emergency decisions pursuant to 23090.5(b).

In addition, the Legislature in Senate Bill 788 in 2019, modified Business and Professions Code section 23090.5(b) to extend the Superior Court jurisdiction to review decisions made by the Department pursuant to Government Code section 11460.10. Even if commenter's assertion that the 1994 law preempted the Department from taking this regulatory action was true at that time, the 2019 action changed the Department's legislative mandate. The Legislature, in the changes to statute made in 2019, anticipated and approved of the Department's use of administrative emergency hearings, review by the Superior Court, and exclusion of the automatic stay and review by the ABC appeals board. This proposed regulatory action is specifically within the Department's legislative authority, elaborating on how the procedure and processes outlined under Government Code section 11460.10, will occur in cases within the Department's jurisdiction. These comments require no changes to the proposed regulatory package.

Suggestion the regulatory package is beyond the scope of the Department's authority by enforcing public health orders during a state of emergency to protect the public health, safety, and welfare.

Written Comments: 9, 17, 32

Public Hearing Comments: 8

Comments Summary:

Commenters suggest that Section 147(b)(6) goes beyond the Department's statutory authority because it cannot create or have the means to discern proper public health orders during the current COVID-19 emergency, or any other emergency orders by other relevant agencies in a different state of emergency in the future, and therefore should not be enforcing the orders made to protect the public health, safety, and welfare issued by other relevant agencies under this regulatory action.

CA Dept of Alcoholic Beverage Control Response:

The Department has been acting as a law enforcement agency for the entirety of its sixty-five-year existence. Although the Department does work with local law enforcement to aid in monitoring 93,000 alcohol licensees, all administrative actions and penalties imposed on ABC licenses for violations of the ABC Act come exclusively from the Department's enforcement mechanisms. In addition, the Department is the only entity with the legislative authorization to make administrative emergency decisions over ABC licensees. The Department has long had experts and funding for these exact types of law enforcement and administrative decisions. The Department will continue to perform that function as directed by the Legislature.

This regulatory action is not allowing the Department to create public health policies, or issue orders in response to a declared state of emergency. It is however, allowing the Department to do what it has always done, ensure that ABC licensees comply with the current law to protect public health, safety, and welfare, even if that law comes in the form of an emergency order during a declared state of emergency. These comments require no changes to the proposed regulatory package.

Suggestion the regulatory package is beyond the scope of any stated emergency related to COVID-19 and therefore is unnecessary.

Written Comments: 17, 32, 36

Public Hearing Comments: None

Comments Summary:

Commenters state that this proposed regulatory action goes beyond the scope of the declaration of emergency established in the earlier emergency regulatory action and is therefore unnecessary.

CA Dept of Alcoholic Beverage Control Response:

Although the Department first proposed the administrative emergency decisions regulation as an emergency regulatory action, this is a certificate of compliance action that no longer must comply with emergency rules. The Department acknowledged this comment at that time and changed the original proposal to limit the emergency regulatory action to only the parts that were specifically tied to the emergency. The current regulatory action is no longer based on the COVID-19 pandemic or the state of emergency that accompanies it but is meant to be a permanent addition to the California Code of Regulations that is going through the normal regulatory process.

The regulatory package is within the Department's legislative authority, as shown by Senate Bill 788 of 2019, and implements and makes clear Business and Professions Code section 23090.5(b) and Government Code section 11460.10. This is the intrinsic purpose of regulatory packages and is necessary for the Department's further implementation of its legislative mandate to protect the public health, safety, and welfare by licensing alcoholic beverage locations and ensuring licensees comply with the law. These comments require no changes to the proposed regulatory package.

Suggestion the regulatory package is unnecessary and should not be made permanent because the Office of Administrative Law set an expiration for the previous emergency regulatory package.

Written Comments: 17

Public Hearing Comments: None

Comments Summary:

Commenter states that because the Office of Administrative Law set an expiration date for the Emergency Regulatory Action, it is inappropriate for the Department to seek a permanent version of the administrative emergency hearing regulation through this certificate of compliance.

CA Dept of Alcoholic Beverage Control Response:

All emergency regulatory packages have an expiration date set by law from the date of their adoption regardless of their worth or necessity going forward. If an administrative department sees a need for the emergency regulatory package beyond the current emergency, the proper procedure is to enter a certificate of compliance and go through the normal regulatory process. This regulatory action is the certificate of compliance action to make the proposed regulatory action permanent as was anticipated and authorized by the Legislature when it passed Senate Bill 788 in 2019. This comment requires no changes to the proposed regulatory package.

Suggestion the regulatory package is a violation of due process because notice of the administrative emergency hearing is only required, “if practicable.”

Written Comments: 18, 19, 31, 35

Public Hearing Comments: None

Comments Summary:

Commenters object to the wording in Section 147(d) that states notice to an ABC licensee shall be given, if practicable, and consider it a way for the Department to deprive an ABC licensee their right to participate in an administrative emergency hearing and bypass due process.

CA Dept of Alcoholic Beverage Control Response:

The Department is required to hold an emergency hearing to determine if an administrative emergency decision is needed, and the Department must provide notice to the licensee, if practicable. In all cases notice must be attempted, however if the licensee is unavailable or non-responsive, the hearing can still proceed. If the licensee is not present or unavailable for an administrative emergency decision hearing, the Department will need to prove that notice was given, or that notice to the licensee was not practicable by preponderance of the evidence in order to comply with the notice requirement. The Department is providing licensees with the exact notice procedure outlined in Government Code section 11460.40 as anticipated and authorized by the Legislature when it passed Senate Bill 788 in 2019. These comments require no changes to the proposed regulatory package.

Suggestion the regulatory package states that the right of an appeal by the licensee is a loophole the Department is seeking to close.

Written Comments: 22, 31, 34

Public Hearing Comments: 8

Comments Summary:

Commenters object to language used in the Initial Statement of Reasons saying the loophole identified by the department is a removal of ABC licensee appeal rights.

CA Dept of Alcoholic Beverage Control Response:

The Department states in its Initial Statement of Reasons for this regulatory action, “[c]urrent law has a large bureaucratic loophole through which irresponsible ABC licensees can continue to present an immediate danger to public health, safety, and welfare during the lengthy administrative process of holding ABC licensees accountable for their violations of the ABC Act.” This does not refer to an ABC licensee’s appeal rights, but rather to the automatic stay imposed, regardless of conduct, when an ABC licensee appeals a Department decision to the Alcoholic Beverage Control Appeals Board (“ABC appeals board”). The automatic stay is not in itself a loophole, but a few ABC licensees who are harming the public use it as a shield to continue to harm the public and benefit from a license that should be revoked due to their egregious conduct. For examples of this, see the cases listed as [documents relied upon](#) in the regulatory record.

The Department does not consider the right to appeal as a loophole evidenced by a right to appeal to the Superior Court within the regulation as defined by the Legislature in Senate Bill 788 of 2019. This was done because the ABC appeals board meets rarely, and any appeal of an administrative emergency order must be done quickly to ensure review prior to serious harm to the Licensee. The regulation does not change the automatic stay or right to appeal to the ABC appeals board for the Department’s normal administrative hearing process which will continue relatively unchanged by this proposed regulation. This comment requires no change to the proposed regulatory package.

Suggestion the Department did not respond to comments received for the Emergency Regulatory Action which preceded this Certificate of Compliance.

Written Comments: 31

Public Hearing Comments: 8

Comments Summary:

Commenters suggest that the Department did not respond to public comments received in the emergency regulatory action that preceded this certificate of compliance action and therefore resubmitted all comments made at that time.

CA Dept of Alcoholic Beverage Control Response:

The Department [responded](#) to every comment received during the emergency regulatory action. Where a commenter has referred to past comments made during the emergency regulatory action, the Department refers them to the previous responses. The Department will incorporate the responses to all public comments received during the emergency regulatory action in response to this comment. This comment requires no change to the proposed regulatory package. Note that the Department did limit the emergency regulatory package to specific immediate harms due to the COVID-19 state of emergency in response to comments received at that time.

Suggestion to provide a definition for “agent” used throughout the proposed regulation Section 147(b).

Written Comments: 32

Public Hearing Comments: None

Comments Summary:

Commenter suggests that the word agent needs to be defined to provide clarity to ABC licensees because actions by their agents can bring about liability for and licensee and create the basis for an administrative emergency hearing.

CA Dept of Alcoholic Beverage Control Response:

The legal dictionary definition of the word agent is “[o]ne who agrees and is authorized to act on behalf of another, a principal, to legally bind an individual in particular business transactions with third parties pursuant to an agency relationship.”¹ The Department is relying upon similar legal definitions of an agent in the crafting of this regulation. There is no limit or expansion of the word agent in this regulatory package and defining this word further is unnecessary. This comment requires no change to the proposed regulatory package.

¹ agent. (n.d.) *West's Encyclopedia of American Law, edition 2.* (2008). Retrieved December 17 2020 from <https://legal-dictionary.thefreedictionary.com/agent>

Suggestion to change language in the proposed regulation Section 147(b)(6) from being “in conflict” with a public health order to “in violation” with a public health order.

Written Comments: 32, 35

Public Hearing Comments: None

Comments Summary:

Commenters state that the phrase “in conflict” does not provide the clarity necessary for understanding and enforcement. One commenter suggests replacing this phrase with “in violation” to better provide clarity to this subsection.

CA Dept of Alcoholic Beverage Control Response:

The Department agrees that this wording in the proposed regulatory text is unclear and has modified the text as recommended by commenter to provide clarity and uniform enforcement of the proposed regulation.

Suggests changing language in the proposed regulation Section 147(b)(6) to specify what types of orders made during a state of emergency constitute an immediate harm to public health, safety, and welfare, and to create a nexus to the declared state of emergency and the violation.

Written Comments: 32, 35

Public Hearing Comments: None

Comments Summary:

Commenters suggest that the current wording is overly vague and lacks clarity for enforcement and understanding by the public. Suggestions include creating a nexus to the conduct of the licensee, the location of the licensed premises, and the emergency in place, as well as a requirement that the licensee's violation be made knowingly to ensure the licensee was aware of the public health order meant to be followed at the time of the violation.

CA Dept of Alcoholic Beverage Control Response:

Section 147 (b)(6) was previously included in the emergency regulatory action as Section 147(b)(1). The Department agrees that the proposed regulatory text can lead to confusion in implementation and enforcement even with the clarifying language implemented by the Department in this certificate of compliance action. The Department has modified the proposed language of this section to clarify and ensure that a licensee must know that the health order exists and that the violations of those orders are in connection to the declared emergency and the licensed premises. This has always been the Department's intent as stated in the Initial Statement of Reasons, both in the emergency regulatory action and this regulatory action.

Suggestion that the language in the proposed regulation Section 147(b)(5) must be changed to provide clarity because licensees will not know what “on a consistent basis” is and what violations apply.

Written Comments: 35, 36

Public Hearing Comments: None

Comments Summary:

Commenters state that the phrase, “on a consistent basis” lacks the clarity necessary for understanding and enforcement, and that there is vagueness to what is included by the phrase “violations of law that constitute grounds for suspension or revocation of the license.”

CA Dept of Alcoholic Beverage Control Response:

The Department is not intending to allow every violation of the ABC Act to become subject to an administrative emergency decision as implied by the commenters. As explained in the Initial Statement of Reasons, this subsection is to stop “repeated knowing disregard for the law.” The addition of the “knowing” element which also applies to the “on a consistent basis” element, both of which are not elements under the Department’s normal administrative process, is to be able to take action against an ABC licensee who is aware there are repeated violations occurring at their licensed premises and take no action to stop them even after being noticed of the issue either by the Department or other law enforcement agency. It is the knowledge and a repeated disregard of the law by an ABC licensee, their employee or agent, that would make them subject to an administrative emergency decision under this subsection, not the specific conduct.

All violations of the ABC Act constitute grounds for suspension or revocation of the license and a harm to the public health, safety, and welfare as defined by the Legislature. A list of the violations that could trigger this sub section would be duplicative of the code and therefore unnecessary. This comment requires no change to the proposed regulatory package.

Suggestion that the definition of “law enforcement problem” in Section 147(b)(2)(A) be modified

Written Comments: 35

Public Hearing Comments: 6

Comments Summary:

Commenters object to the definition of a “law enforcement problem” as overly vague in terms of the “average alcoholic beverage location.” Suggests that an ABC licensee cannot “knowingly” be a law enforcement problem unless they know the law enforcement problem exists.

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the comments made regarding Section 147(b)(2)(A) and that the definition was overly vague and did not meet the Department’s intent when it comes to “average alcoholic beverage location” and needs to be modified to ensure the conduct is directly related to the operation of the licensed premises. The proposed text has been modified to ensure it aligns with the Department’s intent that this section only apply to ABC licensed premises whose conduct and policies repeatedly instigate unlawful behavior on or around the licensed premises.

In addition, commenters are concerned about how a licensee can knowingly be a law enforcement problem unless they know a law enforcement problem exists. The Department specifically drafted this section in this way because it will require a showing that a licensee was notified that a law enforcement problem exists on their licensed premises and then refuses to change their operations to further present a law enforcement problem. It was drafted in this way to ensure that responsible licensees who respond to law enforcement and Departmental requests to modify their operations to cease a law enforcement problem would not be subject to an administrative emergency decision. Similarly, a licensee who was not notified that their licensed premises was a law enforcement problem would also not be subject to an administrative emergency decision. This part of the comment does not require further modification of the proposed regulation.

Suggestion that single incidents of a licensee knowingly drug dealing, human trafficking, or the conviction of serious crimes of moral turpitude do not constitute an immediate threat to the public health, safety, or welfare, and the regulatory package should require proof of a pattern of conduct for an administrative emergency decision to be issued.

Written Comments: 36

Public Hearing Comments: None

Comments Summary:

Commenter states that the requirement of some of the stated incidents the Department has classified as immediate threats to public health, safety, and welfare, are not complete because they require only a single incident of licensee drug dealing, human trafficking, or the conviction of serious crimes of moral turpitude, and a single incident does not show that the conduct would continue.

CA Dept of Alcoholic Beverage Control Response:

The Department agrees that a single incident usually does not in and of itself constitute an immediate threat of harm to the public health, safety, and welfare. The Department has made appropriate changes to the proposed regulatory text to show that one incident of drug dealing does not rise to the level of a licensee being subject to an administrative emergency hearing. However, in incidents of a licensee knowingly human trafficking, or being convicted of a serious crime of moral turpitude involving a sexual predatory nature, one incident can be enough to show the licensee themselves is a danger to the public and an immediate threat to employees, visitors, guests, or customers of the licensed premises. The Department has modified Section 147(b)(1) in response to this comment, but other included suggestions did not require a change to the regulatory package.